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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: SRC 00 198 51052 Office: Texas Service Center Date: MAR - 7 2001

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(ii)(b)

IN BEHALF OF PETITIONER:



to maintain data deleted to
prevent identity information
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Weimann, Acting Director
Administrative Appeals Office

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DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, who certified the decision to the Associate Commissioner for Examinations for review. The decision of the director will be withdrawn.

The petitioner engages in the service of automobiles. It desires to employ the beneficiary as a glass tinter for a period of four and one-half months. The director determined that the petitioner had not submitted a temporary labor certification from the Department of Labor or notice stating that such certification cannot be made. The director also determined that the petitioner had not established that the position is of a temporary nature.

Upon review, the record contains a copy of an uncertified Labor Certification, ETA-750, and a notice that a temporary certification by the Secretary of Labor could not be made. Therefore, this issue does not need to be further addressed.

Further, the petitioner has submitted sufficient countervailing evidence to show that qualified workers in the United States were not available, that the employment policies of the Department of Labor have been observed, and that the position offered is temporary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has met that burden. Accordingly, as eligibility has been established, the petition will be approved.

ORDER: The decision of the director is withddrawn.
The petition is approved.